UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NORTH CAROLINA WESTERN DIVISION NO. 5:11-CR-31-BR

UNITED STATES OF AMERICA,)	
)	
v.)	ORDER
)	
)	
TERRENCE MAURICE MCNEILL)	

This matter is before the court on defendant's *pro se* motion for a sentence reduction under 18 U.S.C. § 3582(c)(2). (DE # 52.)

In October 2011, defendant pled guilty to one count of distributing 50 grams or more of cocaine base in violation of 21 U.S.C. § 841(a)(1). In January 2012, the court sentenced defendant to 115 months imprisonment. Defendant appealed. In March 2012, while his appeal was pending, defendant filed the instant motion. In April 2012, the Fourth Circuit Court of Appeals vacated defendant's sentence and remanded to this court for resentencing. (DE # 56.) On remand, in November 2012, the court sentenced defendant to 60 months imprisonment, the statutory mandatory minimum term. Defendant again appealed. The Fourth Circuit Court of Appeals recently affirmed this sentence. (DE # 97.)

Defendant bases his motion on the retroactive guidelines implemented in conjunction with the Fair Sentencing Act of 2010 ("FSA") and on an argument that the amount of cocaine base involved is 20.4 grams. (Mot., DE # 52, at 1-2.) He requests that his sentence of imprisonment be reduced to 78 months. (Id. at 2.) The court notes that on remand, defendant was sentenced pursuant to the amended guidelines and the FSA. The guideline calculation was based on a prior finding that defendant was accountable for 54.7 grams of cocaine base, which

the Court of Appeals recently upheld. (DE # 97, at 3.) Furthermore, the sentence defendant received on remand is lower than what he seeks with the instant motion.

The motion is DENIED.

This 20 August 2013.

W. Earl Britt

Senior U.S. District Judge